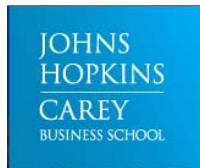


**MAKING SECURE TITLE A GLOBAL REALITY: A
STUDY OF THE APPLICATION OF EXISTING
CONDITIONS TO THE CONCEPT OF A GLOBAL
TITLE REGISTRY**



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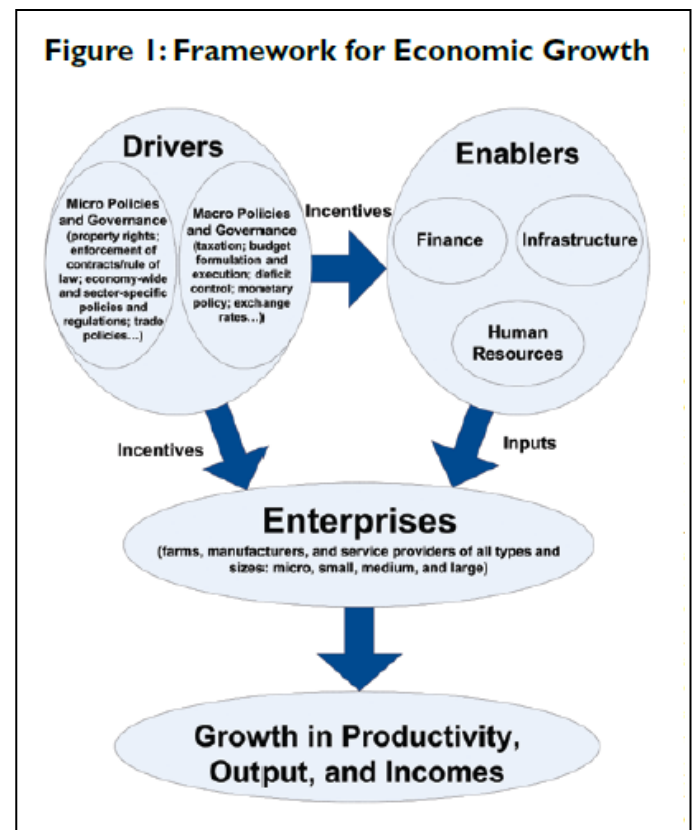
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INTRODUCTION

Volumes of research have been built upon the basic economics surrounding property rights proposed by Hernando de Soto in his book “The Mystery of Capital.” Thriving commerce is only possible when functioning legal and political systems engender property rights and a transparent and functional title registration system provides security for loans; all of which facilitate transactions and investment. Foreign investment bypasses huge portions of the world because the lack of certainty of title creates insurmountable business risk. A global title registration system would have enumerable benefits to both developing and global economies by alleviating this problem and facilitating international real property transactions through title verification. The many challenges in making such a system a reality can be classified into two general categories as follows: the challenges associated with: 1) Application and Enforcement and, 2) Implementation and Funding. An abundance of research is aimed at Implementation and Funding on a country-by-country basis but very little consideration is given to the challenges of Application and Enforcement (either globally or by country). Presumably this is because the benefits gained by creating a reliable registration system are so obvious that the need is assumed to be given and resources are immediately directed towards enacting solutions (Implementation and Funding). However, this ignores the basic fact that there is a surprisingly inconsistent approach to property ownership throughout the international community which severely limits the practical *application* of most solutions. Before a sustainable solution can be enacted, appropriate study must be given to the underlying Application and Enforcement issues. This paper determines the potential application of a global title registry by defining categories of candidate countries, discussing the political, legal and practical realities involved in finding a solution suitable to each category and further suggests ways to unite all categories into a single global title registry.

I. STATEMENT OF THE PROBLEM

Reliable evidence of title is simply not available in the majority of countries. This is often a function of one or more failings in property rights laws, title registration systems, and incentives for adherence/compliance. While certainty of title is a small piece of a complicated economic puzzle, it is a critical one because property rights are the financial cornerstone for economic growth (as shown graphically in Figure 1). The glaring deficiency most countries face in this sector carries with it several consequences (discussed in Section Two). The global community, including both humanitarian and commercial interests, recognizes this deficiency and is constantly endeavoring to improve the situation. The problem, however, is that interested parties are constantly rushing to implement a solution without actually taking into consideration the existing conditions of the countries in question. In order to find a real and sustainable solution, it must be carefully crafted based on the realities at hand. This means the first step before any action can be taken is to conduct a detailed analysis of each country. Specific information needs to be



Source: USAID

compiled and evaluated to see what it reveals. From there, appropriate solutions can be tailored as a platform for implementation plans and sustainable success. (This paper ignores eminent domain, restitution challenges and extra-regulatory government takings. These are all very much

realities in the international marketplace but are all inherently beyond the ability of a title registration system to solve since they can occur at any time at any government's discretion.)

Application: As stated previously and shown in Figure 1, the benefits of clear title are immense and attention is usually focused directly on Implementing a plan to “fix” the problem. However, a critical first step has been overlooked in the body of work on this subject and that is evaluating the measure of potential (or “demand”) for title registration on both a national and global level by determining how the idea of secure title can be *applied* to existing legal frameworks, political situation and social environment (among other criteria) in a way that is functional and, even more critically, sustainable. Any solution that ignores the local realities is inherently destined to fail. Application involves significant detail pertaining to how a viable solution can be structured but should be distinguished from Implementation because it does not focus on the logistics or mechanics of putting the pieces in place; rather it is focused on conceptual problem solving at the operational level to see if and on what basis Implementation could move forward. There are two levels that must be considered when contemplating improvements in title registration: first at the national level and second at the international level through a single, unified global registration system. An important element of Application involves making the subject relevant and accurately identifying players and motivation - a plausible solution has no value unless sufficient interest exists to generate support and enact a solution.

Enforcement: Enforcement is a subset of Application in that it directly contemplates the sustainability of a solution (and therefore its overall application). To be judged as fully successful, any proposed title registration system must continue to function on its own. Any such system, especially one of global magnitude, would likely be voluntary, which means monitoring and imposing penalties for non-compliance will be virtually impossible in isolation.

Therefore, any solution will need to be largely self-sustaining. This can be achieved if proper motivation is identified and a viable structure can be devised.

II. SIGNIFICANCE OF THE PROBLEM & RELEVANCE TO THE FIELD OF REAL ESTATE

It is almost without question, at least from a Western perspective, that a reliable title system is immensely beneficial. On the most basic level, such a tool improves the transparency and functionality of markets. On a more conceptual level, it multiplies fiscal potential via securitized lending by giving property owners access to the capital otherwise locked in real estate. While both have immediate benefit to the local market in which properties are located, there are even greater applications. It is worth the exercise to list some of those benefits to reassert both the domestic and global importance of such a system.

Local: The most basic, local benefit of a reliable title registration system is assurance for locals that they unquestioningly own their property. In many developing countries, ownership is so tenuous that it can be readily challenged and property taken with little recourse to the “owner.” A reliable registration system would clearly alleviate this risk. An electronic system would provide further protection against the loss, destruction or corruption of records, which are unfortunate realities in the majority of countries where a hard copy system is the norm. In addition to preserving individual titles under normal circumstances, this would also prevent complete losses should catastrophe befall a centralized Land Office, such as has occurred in Haiti, Libya, and other places worldwide. Additionally, security of title, and therefore ownership, makes possible economic expansion for the local economy, assuming lending mechanisms successfully follow to capture the opportunity presented by newly secured

collateral. If de Soto's estimates on the unrecognized value of untitled/unsecure global property are even remotely accurate (in the trillions) the potential economic expansion is untold.

From a public sector viewpoint, improved title translates into revenue for the local authorities via taxation. Levying property taxes is impossible without reliable records to show what property exists and who owns it. With this information in place governments can recognize additional revenue, the greater practical application of which is that they might be able to improve public services and conditions for their citizens. While a new tax burden would certainly be viewed unfavorably by many "land owners" who previously hadn't been subject to tax, it is arguably a fair price to pay in exchange for certainty in ownership and the possibility of improved services. Improvements in schools and other infrastructure should, theoretically, improve the possibilities for all citizens. (Government corruption is not the focus of this paper so it does not contemplate whether or not potential tax dollars will actually be used for their intended purpose.)

National: Collectively, the local level benefits recognized from improving title registration gain momentum when considered on a national level. The combined economic expansion of several local markets should be sufficient to create a nation-wide benefit because, as local investment occurs, markets expand and tax revenue increases (including income and other tax). Countries sophisticated enough to have a market index should see a measurable increase in value but even countries with low land values and poorly functioning lending institutions should still achieve a positive net gain. By strengthening its overall economic position, a country also improves its standing within the international community. An immediate benefit of demonstrating stronger national financial standing might be gaining increased access to World Bank and IMF programs for agricultural and infrastructure projects.

International: One of the largest and most obvious benefits of improved title registration is the reduction of business risk for multinational operators. Enormous revenue is gained by any country able to attract foreign investment, both in construction of facilities to support local operations (factories) but also from investment grade developments (leased properties, resorts, housing to meet local demand, etc). A positive snowball effect of economic gain is achieved if investments could be made in places with lower land and labor costs: multinationals reduce production costs, end users benefit from reduced pricing and local economies benefit from an infusion of money and jobs. However, many countries currently fail to capture any portion of this benefit because of the business risk associated with investment. A registration system guarantying certainty of title would reduce transaction costs and time as well as risk. While these are often not important deal elements to locals, they are critically important in the decision making of for-profit global firms who must pay attorneys for hours of title research because no alternative method exists that will give them the comfort level they require to meet their standards of care or due diligence in transactions. A functional property registration system might also make possible title insurance, which is currently unavailable in many countries because the risk is too great to insure due to poor information. Most global insurance companies offer policies on a strictly one-off basis by evaluating the individual circumstances. This is inefficient and does not offer adequate protection against business risk on a global scale. If title insurance or a reliable equivalent could be put in place, it would almost certainly provide multinationals the level of comfort required to trigger investments.

Quantitative Example: The best way to understand the true value of improving title records is to review a financial example; benefits to citizens, the public sector and commercial interests can easily be demonstrated in concrete terms. Namibia is selected for this exercise because it is a

typical example of a country with plenty of positive attributes conducive for development/investment opportunities. Namibia is active in the international community (World Trade Organization member [WTO]), is centrally located on the African continent and has great coastal shipping potential. There is no capital gains tax in Namibia and it is possible for foreign investors to repatriate proceeds of sale.¹ Further, the country has an average score on the World Bank's Governance/Anti-Corruption Index, which is a collection of six indicators that track the effectiveness of governments (five of the six were used for this research: Control of Corruption, Rule of Law, Regulatory Quality, Government Effectiveness, and Political Stability/No Violence)². Despite all these positive factors, the country is overlooked for international investment, with the possible exception of some residential demand, because Namibia suffers from weak property rights³. Significant economic potential and substantial benefits to each stakeholder group could be recognized if the property rights situation could be improved via security of title. The calculations below outline an estimate of the forgone value of property in Namibia, which is staggering.

RURAL PROPERTY CALCULATIONS		URBAN PROPERTY CALCULATIONS	
823,290,000,000	total land area in sq. m	2,108,665	population (2009)
75%	percent of land that is considered rural	37%	percent urban (2008)
617,467,500,000	total size of rural land in sq. m	780,206	people living in urban environment
50%	percent of rural land that is informal	235	size of avg urban dwelling in sq. m
308,733,750,000	total size of informal rural land in sq. m	183,348,422	total size of all urban dwellings in sq. m
\$ 49.00	land value per sq. m (USD)	85%	percent of urban dwellings that are "informal"
\$ 15,127,953,750,000	total value of informal rural land (USD)	155,568,358	total of informal urban dwellings in sq. m
		\$ 120.00	price for informal urban dwelling in sq. m
		\$ 18,668,202,942	value of untitled urban property (USD)

¹ Global Property Guide website, Namibia profile, <http://www.globalpropertyguide.com/Africa/Namibia>

² The World Bank Group, Governance Indicators data set 2008

³ Wall Street Journal and Heritage Foundation Property Rights Index; International Property Rights Index

\$ 15,146,621,952,942	= Total value of Urban and Rural "Informal" property in Namibia
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It is possible to translate the value identified by the previous calculations into plausible, measurable benefits to three basic stakeholder groups: citizens, government, and corporations. The calculations below offer a suggestion as to how this value could be used were it possible to capture Namibia's "informal" property.

TRANSLATION OF VALUE TO STAKEHOLDERS		
	\$ 15,146,621,952,942	value of informal property
Citizen Benefit:	\$ 7,573,310,976,471	value of potential citizen loans (50% LTV)
Gov Benefit:	\$ 151,466,219,529	gained revenue from property tax value (1%)
	\$ (2,593,780,000)	Namibia's public debt (2009)
	\$ 148,872,439,529	government net position
Corp Benefit:	40,000	site for a manufacturing plant size in sq. m
	\$ 1,960,000	cost to acquire in Namibia
	\$ 24,880,000	cost to acquire in Morocco
	\$ 22,920,000	cost savings

III. LITERATATURE REVIEWED SHOWING HOW THIS PROBLEM IS RELATED TO PREVIOUS STUDIES.

Given the relevancy of achieving security in property tenure, there is an enormous volume of existing and ongoing research surrounding the different facets of property rights aimed at bringing transparency and sophistication to global property markets. Much of the research is interrelated yet there is no coordination of effort and each product has distinctly different focus. For example,

there are records outlining how many signatures are needed and how many days it takes to register title in most countries but, while this may be an interesting fact, it is not inherently useful unless it becomes an input used to generate a solution. None of the existing body of work considers the Application of improving property rights via improving certainty of title. This is a critical absence as much effort is focused around the challenge of Implementation without the benefit of strong, suitably focused research as a basic, underlying tool. As a result, any attempted solutions are misinformed at best and potentially wrong at worst. This section outlines some of the relevant work reviewed for this project.

Hernando de Soto:⁴ “The Mystery of Capital” shone new light on the question of improving global economic conditions through the vehicle of property rights and security of title. De Soto explains the connection between lack of effective title and forgone economic opportunity. He further provides specific examples designed to show the true magnitude of lost capital associated with the millions of untitled, “informal” properties in the world, an estimated \$9.34 trillion as of 1997. It is not sufficient for governments to attempt to improve their economies simply by amending policies, restructuring debt or any number of other seemingly relevant changes. Land rights and security of property tenure are at the heart of capitalistic success and no progress can be made until this area is addressed as the foundation to the rest of the economy.

Institute of Development Studies:⁵ Virtually the only voice of dissention against de Soto is found in the IDS Working Paper 272 in which the author challenges the goal of instituting and enforcing individual tenure of title and advances five flaws in modern theories: “legality” is too narrowly

⁴ De Soto, Hernando. 2000. *The Mystery of Capital*. Basic Books

⁵ Nyamu-Musembi, Celestine. October 2006. Breathing Life into Dead Theories about Property Rights: de Soto and Land Relations in Rural Africa. *Institute of Development Studies Working Paper 272*.

defined; there is an inherent flaw in the underlying assumption that a transition to private, individual ownership is inevitable; the link between formal title and access to credit is unproved; markets are too narrowly defined; and that formal title may generate insecurity as well as security. This work is relevant by virtue of its uniqueness and consideration of its arguments should be included in any discussion of the title registration issue. It is also critical in that it raises an important point which bears consideration: central to the paper is the fact that efforts to promote title in many African countries in pursuit of de Soto's vision have demonstrably failed since the 1950s. The author makes several good points about the causes of these failures, including that social reality is different than the law and that previous solutions required governments to embrace too large a role which they cannot realistically fill. Most of these criticisms should be welcomed because they touch on the very questions of Application and the need to achieve sustainability by recognizing and working within local realities rather than attempting to force an ideal into an inappropriate situation.

RICS Research.^{6,7} The Royal Institute of Chartered Surveyors (RICS) acts to “promote international standards and best practices for [real] property in the public interest.” It frequently advises governments on ways to improve property markets through such methods as valuation standards and land policies. RICS has an active research arm which produces a large volume of work focused on the importance of improving land tenure in developing countries. Two studies in particular are relevant to the question of title registration: Urban Land Policies for the Poor in East and Southern Africa and The Effectiveness of Institutions in Land Registration in Ghana. The key findings of these papers reaffirm the need for security of title and functional title registration

⁶ Silayo, Eugene H. Urban Land Policies for the Poor in East and Southern Africa. Ardhi University, Tanzania. Sponsored by RICS.

⁷ Somevi, Joseph K. October 2001. The Effectiveness of Institutions in Land registration in Ghana. Oxford Brooks University, UK. Published by RICS Foundation.

systems. The lack thereof, combined with burdensome registration procedures, actually encourages “informal settlements” as the poor forgo efforts to work within a broken system. Of a study of registries in eight African countries, registries were found to have the following devastating flaws:

- Bureaucratic, corrupt and inefficient
- Poor land records that result to allocation of a land parcel to more than one person
- Processing of rights in land are performed under manually operated systems that are slow, prone to errors and abuse
- Centralized land registry systems that [are] expensive to users

While the research concretely supports the need for land tenure, it generally recommends this goal be achieved through the institution of National Land Policies (NPLs) and title registry reform. Realistically, however, there is limited value in declaring that a solution lies in the “Adherence to ethical performances by the public officials entrusted with land allocation, land use management and land administration aspects” because it relies on voluntary compliance without motivation and, as such, is not inherently self-sustaining. However, many of RICS policy recommendations would be invaluable if they could be enacted.

USAID:⁸ In the course of its mission to promote global economic growth, the US Agency for International Development (USAID) has identified property rights as a key driver of economic growth. This suggests these rights are not just important but in fact are a critical part of the base work upon which improving economic conditions and USAID’s mission rests. This is consistent with the level of importance ascribed to these rights by de Soto. Throughout its literature and studies, USAID repeatedly affirms its commitment to improve property rights worldwide; however, a specific method for overcoming this challenge is not detailed. Rather, they work through political and educational avenues with the general aim of improving a country’s overall

⁸ US Agency for International Development. April 2008. Securing the Future: A Strategy for Economic Growth.

situation. Specifically, USAID breaks the developing world into 5 categories based on similarities in development status, performance and prospects. The specific categories are: Developing Countries, Transforming Countries, Rebuilding Countries, Sustaining Partnership Countries, and Restrictive Countries. USAID then seeks to implement programs consistent with its mission that are generally tailored to fit these categories. This approach works as an umbrella of general improvement but it does not put sufficient focus on analyzing and identifying criteria for success on property rights.

World Bank Doing Business Project:⁹ The strength of this World Bank project is in its scope, which includes information on operational procedures necessary for “doing business” in virtually all countries. It unifies a wide network of experts and local sources and includes details of property registration among its many topics. However, the information on property transactions and title registration is severely limited. This is done out of necessity in order to achieve consistency for comparison of title registration time across all countries; Figure 2 shows the assumptions used. While these may permit ease of comparison, they are unquestionably not the norm when “doing business” in most countries. The value of this study’s findings are extremely limited as they only apply to property that is deeded and capable of being transferred. The

Figure 2

result is misleading information which gives the false sense that transactions are possible and that markets are functional (although

<p>To make the data comparable across countries, several assumptions about the parties to the transaction, the property and the procedures are used.</p> <p>Assumptions about the parties</p> <p>The parties (buyer and seller):</p> <ul style="list-style-type: none"> • Are limited liability companies. • Are located in the periurban area of the country's most populous city. • Are 100% domestically and privately owned. • Have 50 employees each, all of whom are nationals. • Perform general commercial activities. <p>Assumptions about the property</p> <p>The property:</p> <ul style="list-style-type: none"> • Has a value of 50 times income per capita. The sale price equals the value. • Is fully owned by the seller. • Has no mortgages attached and has been under the same ownership for the past 10 years. • Is registered in the land registry or cadastre, or both, and is free of title disputes. • Is located in a periurban commercial zone, and no rezoning is required. • Consists of land and a building. The land area is 557.4 square meters (6,000 square feet). A 2-story warehouse of 929 square meters (10,000 square feet) is located on the land. The warehouse is 10 years old, is in good condition and complies with all safety standards, building codes and other legal requirements. The property of land and building will be transferred in its entirety. • Will not be subject to renovations or additional building following the purchase. • Has no trees, natural water sources, natural reserves or historical monuments of any kind. • Will not be used for special purposes, and no special permits, such as for residential use, industrial plants, waste storage or certain types of agricultural activities, are required. • Has no occupants (legal or illegal), and no other party holds a legal interest in it.
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⁹ The World Bank Group Doing

slow). The danger is that users turning to this source who are not necessarily versed in international transactions will draw inappropriate conclusions. Further, the aim of this study is limited in scope with only the goal of providing comparative timing of title registration between countries while making no effort to suggest improvements on a country-by-country basis.

International Property Markets Scorecard:¹⁰ This is one of the most comprehensive studies available and is supported by International Private Enterprise (CIPE) and the International Real Property Foundation (IRPF). The Scorecard project is the first comprehensive attempt to unite all the interrelated elements critical for functioning markets. It does so by identifying six core elements and their associated subcategories and ranking them, as shown in Figure 3, to provide an overall “score” for a particular country. Property rights are one of the core elements

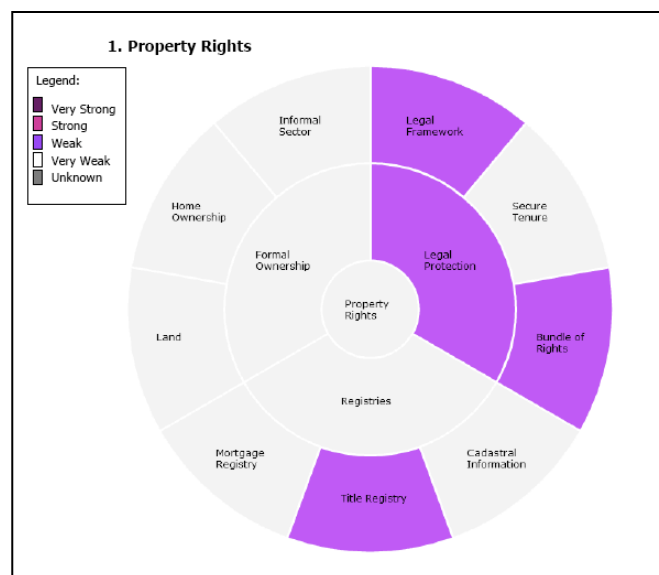
Figure 3



Source: Scorecard Project

and are further divided into the three subcategories of: Legal Protection, Registries

Figure 4



Source: Scorecard Project

¹⁰ Presentation by Bill Endsley, World Citizen Consulting, to Johns Hopkins University, March 2010; Interview with Bill Endsley March 2010; World Citizen Consulting Scorecard website, worldcitizenconsulting.net/scorecardproject.html/

and Formal Ownership, as shown in Figure 4.

While the Scorecard project seems to have accurately identified all the correct elements needed to evaluate the functionality of a particular market, the weakness of this project lies in its ambition. The amount, type and level of detail sought is so great that huge amounts of research are needed to complete the Scorecard for each country. In most cases, in-country work is required. As a result only a handful of countries have been completed. Further, this study, while immensely valuable as a repository of key details, is informational only. It can easily be used to identify weaknesses in a country's system but it makes no effort to propose solutions on the basis of its findings.

U.S. Department of Commerce's Commercial Service Country Reports:¹¹ These reports are very comprehensive and provide infinitely more detail than the World Bank's Doing Business project. However, their aim is to inform individuals or companies about the challenges of operating in specific countries. Therefore, their focus is broad and does not provide a level of detail necessary to address solutions to property issues. For example, no guidance is given to would-be transnational operators as to how title challenges should be overcome or addressed.

Global Real Estate Project:¹² This is an academically initiated undertaking which seeks to be a repository of country information generally pertaining to property rights. It is primarily an internet based work although a related book has been published. The web site has more countries and more specific detail than the book however there is inconsistency between the information provided on the web site, which is understandable considering the level of detail each category envisions. The

¹¹ U.S. Department of Commerce's Commercial Service 2009/2010 Country Reports available at:
<http://www.export.gov/mrktresearch/index.asp>

¹² The Global Real Estate Project. Burns School of Real Estate and Construction Management, University of Denver. Dr. Levine, Mark, Director. http://burns.daniels.du.edu/main_new.asp

Figure 5

section for Kenya (Figure 5) show there are several unknowns even for a relatively “modern” African country. The Global Real Estate Project has the potential to be a resource tool were it to be more fully populated; however, it does not seek to make any recommendations nor highlight title flaws or solutions.

the global real estate project	
Kenya - Real Estate Trends	
Acquisition costs	Transactions costs are dictated by the estate agents act. Commercial sole agency fees are officially 7.5% of the first years rent, although this is often negotiated down to 5% if the building is also managed by the agent. Sole agency fees are based on a sliding scale of approximately 1.25% of the realization price and are paid by the vendor. Legal costs are approximately 1.5% of the value and stamp duties are levied at 4%. (Source: Global Real Estate Project: Bonnett, Braxton, Gart, Houtsma, and McInerney)
Property and ownership information	
Transaction information	
Real estate trade association	
License requirements	
Land description meters and bounds survey system	
Rights and interests in land	
Forms of ownership	
Transfer of title	
Recordation and transfer of title	A program of consolidation of small holdings and of land registration was started in 1954 is now almost complete in the Central Province and is being extended to other areas of Kenya. Land consolidation, adjudication and registration is now provided for by three principal enactment's, the Land Consolidation Act, the Land Adjudication Act, and the Registration Land Act. The Land Adjudication Act of 1968 enables the recording of both persons and groups as owners of Land. A group is defined as a tribe, clan, section, family or other group of people. Source: National Reports.
Contracts	Contract law is contained in the Law of Contract Act dated 1967.

Source: Global Real Estate Project

IV. METHOD USED: ANALYSIS OF SECONDARY DATA

It is neither the purpose nor goal of this paper to do direct research on existing title systems. To do so would require significant funding and time and does not guarantee any better understanding of the challenges at hand than may be gathered remotely. Therefore, an analysis of secondary data to create a new product is appropriate. Specifically, information has been gathered from the existing research and theory described in the previous section as well as stakeholder interviews with entities on the forefront of global property issues.

V. METHODS OF GATHERING & PROCESSING DATA

Gathering Data: Quantitative data will be gathered from existing sources such as the studies listed previously. Qualitative data will be gathered through interviews with key stakeholders,

such as the Department of State's Bureau of Overseas Building Operations (OBO). This bureau actively does business in 176 countries (265 cities) outside of the United States and controls an international portfolio of 18,000 properties. Key points from the interviews are outlined as part of the Analysis of Findings.

Processing the Data – Part I: The main tool used to compile and process data for this project is a Property Rights Matrix. It builds upon previous research by filling in the extreme multitude of gaps where information was weak and/or missing as it pertains to the title registration issue. In doing so, it addresses the obvious “hole” in the existing body of research, which is the lack of a comprehensive and accessible repository of global property rights compiled with specific information needed to analyze title registration challenges. Unlike previous work, the matrix focuses exclusively on topics related to title registration; note that this also includes peripheral areas that do not directly involve title but which have direct impact on it, such as measures of a national government's effectiveness. The benefit of developing a matrix with this specific focus is that it serves as the basis for processing the data to identify issues related to the question of global title registration and determining its *application*. However, this is only an initial step; additional detailed study can be performed to discern and verify nuances in this complicated subject which will then allow even more advanced conclusions to be drawn about Implementing a solution. The matrix can be improved and updated to accommodate future research. The matrix is provided in Addendum section A.

Processing the Data – Part II: The matrix helps collect and outline the relevant issues in a way which brings clarity to the facts and serves as a basis for meaningful analysis. With the matrix in place, the next step in processing the data is the creation of like-themed categories of countries, which serve as the groundwork for identifying suitable, sustainable title registration solutions for

each group. This approach is more feasible than searching for individual solutions on a country-by-country basis and is more appropriate than attempting to find a single solution that works for all countries. It recognizes the balance between customization and practical constraints. This is truly where the Application element is revealed, as the Analysis of Findings section will discuss in detail.

A progressive tiered approach based on measures such as level of country compliance with land policies and title registration systems is not used. There is some logic to creating tiered categories of countries with the idea of overcoming limitations associated with each tier and working toward a goal of moving each group upward along a path towards a “First Tier” status. However, the weakness with this approach is that it assumes that certain set steps apply to all circumstances and must be in place to overcome title challenges. This is not necessarily the case. Also, it requires significant amount of funding, time and external support to help move countries up through the tiers. Instead, the category approach considers the existing challenges and proposes appropriate, current solutions to the actual in-place problems facing each group.

V. ANALYSIS OF FINDINGS – PART I: STAKEHOLDER INPUT

US Dept of State Bureau of Overseas Buildings Operations (OBO):¹³ The Office of the Legal Advisor (L) within the Department of State has, among its other purposes, an interest in promoting free trade globally so that US firms can conduct business overseas. The goal of facilitating international business opportunities for US firms is intrinsically linked to the real estate platform those companies need to support their operations and, therefore, to the title

¹³ Interviews with the Bureau of Overseas Buildings Operations offices of L/BA and PRE/EV. April 2010.

registration issue. There are several different offices within L that come in direct contact with this topic, most notably the Legal Office of Buildings and Acquisitions (L/BA) within OBO, which acts as in-house counsel on behalf of the United States Government's (USG) own international real estate transactions. Through OBO, the USG buys and leases property around the world to facilitate its diplomatic activities; the vast real estate holdings become "a platform for diplomacy." While the USG shares distaste for title risk with other multinationals, its motives are not profit-driven and, as such, the USG makes the political decision to do business (OBO real estate transactions) in countries where the business risk would deter most other operators. It is clear based on L/BA's experiences that improvements in individual country titles or a global system would not only improve transactions for the USG but would create opportunities for other global players.

Also within OBO is the office of Planning and Real Estate (PRE), which has several working teams. The Evaluations division (EV) is responsible for appraising all the USG owned and leased property abroad. Lack of reliable title presents several problems in this arena, not the least of which is assigning a risk premium to property with questionable title. An interesting insight that is revealed through the appraisal lens is the struggle foreign markets have with "noir payments." These are under-the-table payments made on property sales so that a seller can achieve payment of full value without declaring the full amount for tax purposes. In many instances, parties will simply not record the sale at all in order to avoid the tax and the registration hassle. This practice is common throughout the world and makes determining value tremendously challenging as it sabotages accuracy of information. It also prevents (or at least seriously hinders) multinational investment as most global firms will not participate in such a

practice. Accurate record keeping is likely to be unwelcome in countries where these payments are the norm because it will lead to a full transfer tax assesment.

National Association of Realtors (NAR):¹⁴ The International Consortium of Real Estate Associations (ICREA) is an international collaboration of 80 professional real estate associations that was funded by NAR to be their international outreach arm. The group's mission is to create a supportive environment for real estate agents working in the international market and to promote western standards of doing business including the importance of property rights, title and mortgages. Their primary method of achieving their goal is through conferences and education at the professional level (agents) rather than at through grassroots or political channels. ICREA fully recognizes the importance of "marketable title," which has been described by one of their members as the "fulcrum" for individual ability to build wealth, transaction facilitation, the existence of a mortgage market and general economic growth. However, they have no specific lobbying effort aimed at improving title registry conditions.

Fidelity Title:¹⁵ Title policies "fill market gaps that the public sector cannot" by insuring risk of defective title. When multinationals consider investing abroad, they face uncertainty that must be mitigated; title insurance is one way to assign a premium (the cost of the policy) to undertaking greater risk, theoretically in exchange for greater return or opportunity. Without title policies, firms must either self-insure (bear the risk themselves), seek warranties from the seller, or decide not to invest. By mitigating business risk the existence of title policies would likely increase demand for investment in foreign property markets. However, demand by foreign investors for property in a particular country is generally the driver leading to the issuance of title

¹⁴ Interview with NAR member David Lauster. April 2010.

¹⁵ Interview with Michael Atkins. April 2010.

policies and encouraging the underlying changes that need to take place to facilitate them. Thus, a classic catch-22 situation results. Although much of the World Bank's research (previously described) is helpful to assuage concerns over risk in many markets, it is not sufficient in isolation to justify the issuance of title policies, especially in new markets. Rather, the strength of the host country's legal system and title registry are critically important factors to the introduction of insurance, both of which are noticeably lacking in most developing markets. Ultimately, this means that title insurance as an isolated product has limited value as a vehicle to open up previously untapped markets; however, it is possible that title policies could conceivably be offered in advance of demand if a country's underlying title registration system could be strengthened sufficiently. However, a good title registry does not necessarily translate to complete investor confidence nor does it necessarily negate the need for title insurance.

V. ANALYSIS OF FINDINGS – PART II: CHALLENGES

One of the main revelations stemming from research for this project is that, while there is a vast amount of existing data related to property rights, there is very little study given to analyzing the specific conditions impacting the success of these rights in each country and determining if there is any Application for improvement via title registration. One of the largest flaws with overlooking the realities of existing conditions in this way is that any solutions put in place are likely to be unsustainable, as noted by IDS. This is the main reason that taking a first-step approach to evaluating the exact circumstances is so important. Below are discussions of some of the basic, "real world" constraints that must be taken into consideration.

Title: Any discussion of title registration, whether national or global in focus, is based on the assumption that title exists and does so in a form that can be applied to the concept. This may be one of the largest, unrecognized flaws with current approaches. There is general awareness of the extremes between the US model of free transfer of property to countries such as China, in which real property is almost exclusively held in the public domain. What is less known is that every other approach exists within the spectrum between these two extremes, including a great deal of “informal” ownership. A registration system should potentially contemplate the question of creating title in places where it exists legally in concept but not in practice. Recognizing that differences in title exist and understanding what specific limitations they impose on a title registration system may seem basic but it is critical for identification of categories.

Interestingly, while western ideology regarding title registration seems to be accepted as dominate, it has faults that are not necessarily experienced by countries using the Torrens system. In the US, property officially changes ownership when a title deed (the instrument of conveyance) is registered; obtaining “clear title” requires searching the chain of title deeds to make sure there are no gaps and to identify encumbrances, which are listed on the deed and not necessarily in the Land Office. By contrast, in the Torrens system, property officially changes ownership when the change is noted in the official register (the register itself serves as not only record but also as the instrument of conveyance). Under Torrens, there is no need to verify the chain of title by referencing external documents because register is all encompassing, including a listing of encumbrances. The Registrar is charged with verifying that anything added or changed on the register is done appropriately and the government guarantees the quality of title. The western requirement to register title necessitates extensive title searches and insurance products, which ironically are perceived as “lacking” in other countries when in reality they are simply not

necessary under a Torrens system (theoretically). Ironically, the Torrens system was developed to address weaknesses in the west's original common-law title registration system in which timing of recording and the need for title deeds creates the potential for flaws in title. The historical flaws of the western system are most likely overlooked because today's technology has overcome the challenges associated with the need to register title as records are now reliable, well kept and quickly updated thanks to prevalent use of technology. Further, title insurance was developed to offset any risk of imperfection to title that may have been lost, registered improperly or dominant of the policy holder's rights. Despite ability to overcome them, it is important to recognize that these flaws are inherent in western systems because they will be highlighted if imposed on a country not suitably prepared to address them; many developing nations are at technological disadvantage and fighting corruption, so Implementing a western style title registration system is likely doomed to failure. Part of determining the Application is in understanding the circumstances and limitations that exist and deriving the most suitable solution workable in that framework. A Torrens style system or some hybrid may be more appropriate.

Legal: Preliminary research confirms not only that there is wide approach globally to the concept of property rights, but also that other legal components need to be considered when determining the Application potential of title registration. Examples include the right to freedom of information and accounting for the wide discrepancy between the ownership rights of citizens compared to foreign nationals and corporations. While restrictions on foreign ownership do not directly impact the structure of a title registration system, it does speak directly to the question of the Application of such a system. A good deal of the motivation to embrace and enforce a title system may be capitalistic in nature. If foreign investment or ownership is precluded then the

matter becomes entirely humanitarian in nature with a significantly more narrow benefit (when measured strictly in commercial terms).

While it is not a new revelation that differences exist, as applied to this topic it brings to light the need to better understand the specifics of each system in order to create a solution. The Shari'a laws of Muslim inheritance are an excellent example of a complex legal issue that has direct impact on the Application of title registration. The United Nations, through their Human Settlement Program, has sponsored a variety of research aimed at understanding Shari'a laws with the intention of applying that information to support the UNs humanitarian programs of "promoting access to land and security of tenure." However, these studies have not taken the next step and looked for a solution that respects Shari'a law but which also brings it cohesively into alignment with modern ideas about clear title and registration. Both the Sunni and Shia interpretations of Shari'a laws are heavily vested in Islamic religious beliefs and hardly relate to the conventional legal framework, which usually exists simultaneously with Shari'a law. The Shari'a laws dictate the division of the assets of an estate between surviving relatives according to a specific allocation of shares determined by relationship to the deceased¹⁶. The laws make no distinction between real and other property and cannot be overridden¹⁶. By their very nature, these laws lead to the compulsory allocation of miniscule ownership interests over time which leads to severe "fragmentation" of real property title¹⁶. The result is that, after a generation or two, an otherwise useable piece of land now has a multitude of owners. Their exact percent ownership is usually uncalculated and typically the owners are not all listed on the title as doing so would be expensive and impractical. Generally speaking, countries accepting this system have abandoned the possibility of accurate, enforceable record keeping and land loses all

¹⁶ United Nations Human Settlements Programme. 2005. Islam, Land & Property Research Series Paper 6: Islamic Inheritance Laws and Systems. United Nations.

economic viability since this ownership structure renders it is impossible to convey, levy tax, lend against, etc. Although these laws are complicated and create unique ownership scenarios, there is no reason why the Shari'a rules and title registration should be mutually exclusive, so long as a registration system can be conceived which takes them into account.

Political: Many countries, especially in the Middle East and Asia, do not embrace western notions of information sharing, individual rights and foreign involvement in economies. They may resist participation in any form of global registration program for a variety of reasons ranging from loss of control by the state to a simple refusal on principle to consider western concepts. Other forms of political challenge exist beyond a simple difference in philosophy – there are a handful of countries which are fraught with violence, coups and general political unrest due to constant regime changes. Political issues represent one of the greatest challenge areas.

Technological: While it is generally assumed that the lack of technology is a challenge in many developing countries, it is still a very real and limiting factor that gets overlooked on the rush to Implementation. Technology dependant solutions cannot be solved simply by making the technology available because it is not a sustainable commodity in most developing countries. The reality of the working conditions must be considered in any discussion of Application. Conditions in government offices (such as a Land Office) rarely meet US standards, even within parts of Europe. Specific challenges include unreliable power sources and frequent power outages, a complete lack of technical support, insufficient training programs, and poor working conditions (dirty, theft-prone, etc). For these and many similar and potentially obvious reasons, no solution should be seriously considered in the near term in countries that simply are not prepared to support it in a sustainable way technologically.

Relevancy: This involves identifying groups to whom the topic of title registration is inherently relevant; these are groups with substantial motivation and ability to become part of a solution. For example, a reliable title registry would improve transparency and facilitate transactions; for this very reason, global (and local) real estate and brokerage firms are motivated to oppose progress on this front. Improvements in title would jeopardize their position of power within the local marketplace as the only reliable source of information and transactional facilitation. This is a classic example of knowledge is power and these types of firms are motivated to keep the power to themselves because it translates into job security and revenue. Humanitarian groups certainly have motivation to improve peoples' conditions and security of land tenure, so they should always be included in any proposed solution. However, it is important to realize that these entities have funding limitations and their aspirations/initiatives to follow.

The real targets of a quest for relevancy are the international banking community, global REITs, Sovereign Wealth Funds (SWF) and the collection of mega-multinationals whose real estate holdings are expansive. Improvement in clarity of title would translate into “real” money for these stakeholders and, further, they have the resources to make it happen if they can be properly incentivized and convinced of their roles and the benefit to them. These entities may seem unrelated in business model, product type, etc but they are unified in their inadvertent position as major stakeholders in the global real estate market. According to the Forbes, the largest five global firms of 2009 were: General Electric, Royal Dutch Shell, Toyota, Exxon Mobil and British Petroleum¹⁷. Arguably, energy companies should be treated as outliers for purposes of this analysis because their interests lie in focused geographies where they already receive special cooperation from host governments in order facilitate functioning plants and the

¹⁷ Forbes Special Report on Global 2000 largest firms, list available at website, http://www.forbes.com/lists/2009/18/global-09_The-Global-2000_Rank.html

revenue that comes with them. Upon excluding these firms, the largest five appear more well-rounded: Toyota (Japan, consumer products), HSBC Holdings (UK, banking), AT&T (US, telecom), Wal-Mart (US, retail) and Banco Santander (Spain, banking)¹⁸. This collection of companies posted a joint profit of \$62.46 billion in 2009¹⁸. If only these five firms donated 1/100th of their profit to fund improvements in title registration it would amount to over \$62 million, and would potentially translate into a tax write-off. If the top ten firms (instead of just five) donated 1/1000th of their profits, the numbers would be similar. This shows the magnitude of value that can be achieved by harnessing the interest of this audience collectively and there is plenty of motivation for the big multinationals to do so. For example, Toyota alone has \$52.48 billion invested in real property assets globally including land, buildings and facilities under construction¹⁹. This is a huge exposure should title be less than reliable; further, Toyota might be able to reduce the overall cost of its facilities if it could obtain reliable title in new, cheaper markets by contributing to title registration efforts.

Sovereign Wealth Funds are charged with investing the public wealth of their nations in a way that will ultimately benefit their citizens. The sheer magnitude of the assets controlled by SWFs, estimated in 2008 to be \$3.12 trillion globally, reveals that these entities are major stakeholder in the international arena^{20,21}. The largest SWF, the Abu Dhabi Investment Authority (ADIA), is estimated to control assets worth \$595 billion^{19,20}. Currently, the group invests 3% of their portfolio in direct real estate holdings; however, they plan to increase the

¹⁸ Forbes Special Report on Global 2000 largest firms, list available at website, http://www.forbes.com/lists/2009/18/global-09_The-Global-2000_Rank.html

¹⁹ Toyota Motor Corporation, March 2009 Consolidated Balance Sheets

²⁰ Prepared by the Monetary and Capital Markets and Policy Development and Review Departments. February 2008. Sovereign Wealth Funds – A Work Agenda. International Monetary Fund.

²¹ Sovereign Wealth Fund Institute website, <http://www.swfinstitute.org/>

investment to 6%²². In dollars, this represents an increase of \$18 billion and will bring their direct real estate holdings up to a total of \$36 billion. This is a substantial real estate portfolio. Similarly, much of the investment of SWF as a collective is in real estate or centered around securing long term food and energy supplies. In both instances this means SWFs have an intense interest in land rights and the motivation to promote the protection and security of title. Arguably they may have even greater motivation than regular multinationals because of their political nature and sensitivity of their missions. (ADIA's mission: "to invest funds on behalf of the Government of the Emirate of Abu Dhabi to make available the necessary financial resources to secure and maintain the future welfare of the Emirate."²³) Understandably, quasi-governmental entities investing for the benefit of their citizens by purchasing land and resources in other countries create a touchy political situation. The best scenario for the SWFs is to promote ownership rights and secure title globally so that their purchases are not at risk and may be insulated from challenge by an incensed host government.

V. ANALYSIS OF FINDINGS – PART III: CREATING CATEGORIES

Using the Property Rights Matrix, categories of countries are revealed that share similar characteristics such as political, ideological, and legal positions. Creating and evaluating these categories serves as a platform for analytical problem solving by allowing the individual challenges associated with each to be evaluated independently. The strength of this approach, as mentioned previously, is that it allows for the possibility that no single one-size-fits-all solution may exist or be appropriate. It also frees us to realize that copying a Western model may not be

²² Interviews with the Bureau of Overseas Buildings Operations office of PRE/EV. April 2010

²³ Abu Dhabi Investment Authority website, <http://www.adia.ae/>

suitable; this is innovative as it challenges the generally accepted idea that since western models work, implementing them would solve other countries' title and ownership problems. However, when given a chance to speak for themselves, the facts suggest that there is a better more successful way to free capital and bring certainty to titles that is based on the western concept but is not identical in structure. The various indicators, measures and rankings referred to in this section are shown on the matrix itself and should be consulted accordingly.

CATEGORY 1 - You Have Arrived: The critical element defining this group is that title exists in both practice and theory; most properties are titled. Legitimate private ownership is the norm and title records are considered available to the public. Any differences between of title registration methods within this group are generally irrelevant since their systems are functional and reliable. While it might seem likely that this category would be comprised mostly of first world, “westernized” nations, that is not the case. There is surprising variety among the group: all regions and economic strata are represented; the scores on the World Bank Property Registry Ranking range from 3 to 147; there is little consistency to form of registry (paper, electronic, both). There are also strong similarities: the vast majority are members of the World Trade Organization; with few exceptions (ex: Russia), this group scores well on both the World Bank Governance/Anti Corruption Index and the WSJ/Heritage Foundation Property Rights Index.

Because they share an open approach to information, these countries are in a prime position to “seed” a global title sharing program. One immediately obvious challenge is the lack of volume and agenda among countries in this category. It might seem that if this group were larger or more cohesive politically or geographically, it would be in a stronger position to

influence the global community. However, this group dominates the global economy and constitutes \$24.8 trillion (or 36%) of global GDP based on purchasing power parity²⁴.

Additionally, the diversity of countries is a strength rather than weakness because it speaks directly to the topic of a global community.



CATEGORY 2 - I'm Not Telling: This category is similar to the first in that title exists in both theory and practice; however, critically, public access to title records does not. Unlike Category One, countries in this category are very narrowly focused geographically and politically (with few exceptions). In general, the bulk of this category is composed of the original “parent” countries that colonized much of the world in previous centuries. As such, it is surprising that a wider range of countries don’t fall into this category as would be expected if former colonies had adopted similar systems. These countries share similarities with Category One countries: they are mostly members of the World Trade Organization; their Property Registration Rankings are wildly varied; they generally rank well in the Governance/Anti Corruption Index and Property Rights Index. It should be noted that in both Indices, Category Two countries as a group have

²⁴ International Monetary Fund, World Economic Outlook Database, April 2010

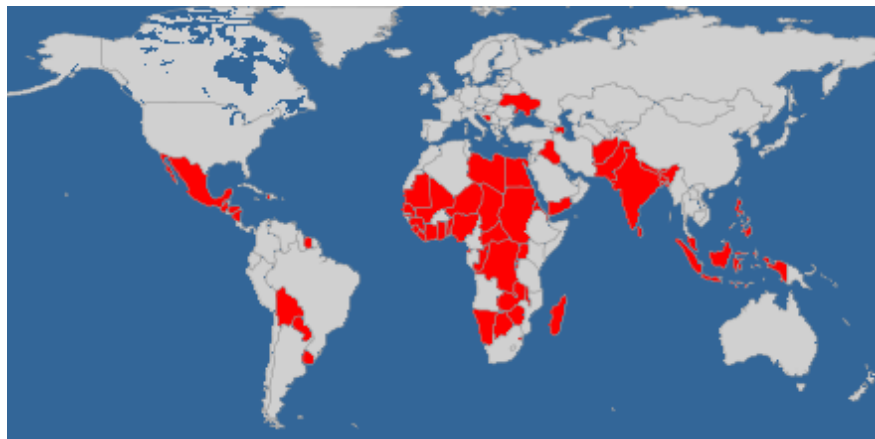
weaker overall scores than Category One countries. Any true discernable difference between Category One and Category Two is attributable to other factors. It is reasonable to assume that political philosophy might provide at least part of the explanation. While these are (generally) “first world, westernized” nations, their European heritage suggests a consistency of political philosophy. The exact reason and nature of this influence is only directly related to the topic of global title registration; therefore, it is mentioned but not explored further. Although this group is geographically more consolidated, it is a significant yet smaller global economic power than Category One countries, comprising \$19.5 trillion (or 28%) of global GDP based on purchasing power parity²⁵.



CATEGORY 3 - Not Ready for Prime Time: Countries in this category are characterized as having title in theory but not in practice, regardless of whether or not that information is considered public. These are generally the former colonies of Category Two countries. It appears that withdrawal of the “parent” influence left behind the concept of private land tenure but not the infrastructure to support the practice. While freedom of self-governance is certainly

²⁵ International Monetary Fund, World Economic Outlook Database, April 2010

of unquestioned value, it only truly leads to benefits for the country's citizens if it is functional. As a group, these countries do not rank well on the Property Registration Ranking, Governance/Anti-Corruption Index nor the Property Rights Index^{26,27,28}. Interestingly, Category Three countries do not have an appreciably higher incidence of over-estimating the strength of their property rights systems, as indicated by comparison with the World Economic Forum's Executive Survey. Almost exclusively, this group uses a paper title registration system and the majority of properties are not titled (although fee simple does exist in theory). Obviously, therefore, one of the major challenges facing Category Three countries is finding a solution to legitimizing untitled properties and incentivizing citizens to abide by regulations. Lack of technology, corruption and lack of functional legal systems characterize these countries and politicians and others in power stand to lose substantial influence and fiscal benefits by embracing a legitimate system.

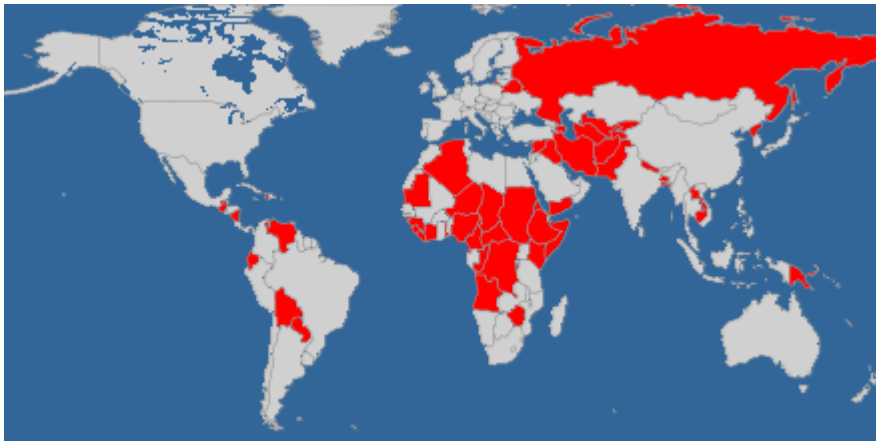


²⁶ The World Bank Group, Governance Indicators data set 2008

²⁷ Wall Street Journal and Heritage Foundation Property Rights Index; International Property Rights Index

²⁸ The World Bank Group. Doing Business 2010 Report, Property Registration Ranking

CATEGORY 4 - Political Difference of Opinion: While it is difficult to quantify, there are countries which pose political challenges from a strictly western perspective. The best way to categorize these countries is by selecting those countries ranking “weak” or “very weak” on the Governance/Anti-Corruption Index²⁹. There is an almost perfect, direct correlation between Category Four countries’ rankings on the Governance/Anti-Corruption Index with their rankings on the Property Rights Index^{29,30}. These are countries in which title often does exist in theory but may or may not be used in practice. It is important to note that there are likely several subcategories within this group depending on the cause and exact nature underlying the political instability. This may not be directly related to the title issue, it is undoubtedly a real world concern that requires an individual solution; motivation is a critical element in this category.



CATEGORY 5 - Not Playing Fair: This is a small category typified by countries in which all the land is held in the public domain. A right to use system seems to be the norm in these countries and registration of rights does exist. China is the classic Category Five example: an individual’s rights to use a property are recorded in the registrar and the property boundaries are reflected in

²⁹ The World Bank Group, Governance Indicators data set 2008

³⁰ Wall Street Journal and Heritage Foundation Property Rights Index; International Property Rights Index

the cadastral. These rights can be purchased from the government (in the event they are not already in place) and transferred freely. While the focus of this paper is not to speculate about political philosophies, it seems fair to say based on common knowledge that Category Five countries embrace a different world-view than “western” nations. This is relevant in that it reveals a motivational and compatibility challenge.



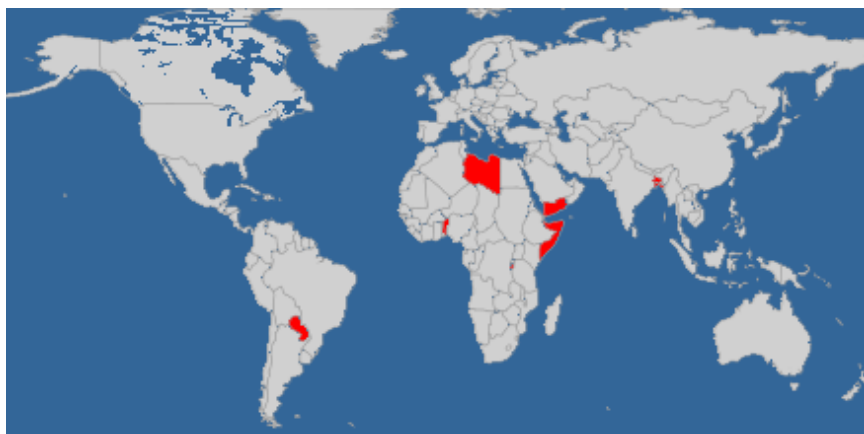
CATEGORY 6 - Tell Me More: These are countries which are so infrequently considered on the world stage as investment worthy that there is very little information available regarding the details of their property rights laws or title procedures. As such they simultaneously represent the greatest challenge and greatest untapped potential for opportunity and development. It should be noted that there is significant, on-going investment into Brazil, but its falls into this category due to the large amount of untitled wilderness, which is occupied informally.



CATEGORY 7 - Repeat Offenders: Special mention should be made of these, countries which appear in two or more of the above categories. A large number of the repeat offenders are members of Category 4 (Political Difference of Opinion) in addition to another category. This suggests, perhaps unsurprisingly, a direct correlation between political challenge and weak property rights and may suggest that, in such countries, the obstacles are too great or numerous to offset. The value in this fairly obvious realization is that it helps focus effort and resources at solvable challenges rather than dull their impact through wasteful misapplication.



BONUS CATEGORY – What Went Wrong?: This is a very small collection of countries also included in the general descriptions above but highlighted independently because of their extreme situation. Of all the countries in the world, this select group has non-functional, non-existent, and/or otherwise unreliable title systems. There is no conceptualization of title nor enforcement of it.



VI. CONCLUSION PART I: GLOBAL TITLE REGISTRY RECOMMENDATIONS

It is irresponsible to deny that the transition to an interrelated and cohesive global community is inevitable and already well underway. Historic innovations have served to bring nations closer and closer together at ever increasing rates since the late 19th century. Examples of functioning global infrastructure abound from early basics such as telephone and air travel to more modern developments including the combined power of FedEx global overnight shipping with the unlimited reach of the Internet to a global market. Many of these are commercial examples but there are plenty of political precedents as well including the European Union, G-8, and United Nations. Perhaps the greatest example of a united global community is the World Trade Organization (WTO), whose 153 member countries sign WTO agreements that provide “the legal groundwork for international commerce³¹.”

Property rights and specifically title registration have their place in this global evolution and, while there are undeniable challenges associated with the concept of a global title registration system, none are any more limiting than challenges faced and overcome previously throughout history. Business, retail and manufacturing are already global enterprises and all their activities are inherently and inextricably linked to an international need for property, which in turn makes relevant the need for reliable global title. There is simply no reason to let the perception of current limitations prevent efforts to make title registration part of the international dialog when the underlying property is already a critical platform for global endeavors. This section describes a basic framework for a global title registration system and proposes ways for each category of country to improve their title registration immediately while also linking in with the concept of global title.

³¹ World Trade Organization homepage, <http://www.wto.org/>

Global Title Registry: Rather than re-invent a system to act as a Global Title Registry (GTR), the structure, at least for preliminary purposes of discussion, can be taken from existing models. Three key elements that can be blended to create GTR are: The International Bureau of the World Intellectual Property Organization (WIPO), which acts as the central, global resource used to register and protect intellectual property; CoStar and the Multiple Listing Service (MLS), US-based repositories of property information; and Bond rating agencies.

WIPO³²: WIPO's actions are supported through the political mechanism of treaty, specifically the Hague Agreement Concerning the International Registration of Industrial Designs. The WIPO entity handles all administrative actions on behalf of member nations including the payment of fees, standardizes the application forms and process, and facilitates evaluation and official recordation of designs in an International Register. It also offers protection against violations to members; however, WIPO specifically states that a "substantive aspect of protection is entirely a matter for the domestic legislation of each [participant]." This means the international courts are not a resource for dispute resolution and any serious matters are referred back to the countries of participation. This presents a problem in light of the underdeveloped legal systems existing in many countries. This shortcoming would have to be resolved in the GTR model.

CoStar:³³ CoStar is an independent research firm that maintains a database of information on commercial real estate. Nationally, they currently track just short of 1.5 million properties including for-lease and for-sale properties in the retail, multifamily, office, industrial, and land categories. While this falls short of the capacity needed for GTR, it proves that the database

³² The Hague Agreement Concerning the International Registration of Industrial Designs: Main Features and Advantages. WIPO publication No. 911(E). World Intellectual Property Organization.

³³ CoStar homepage, <http://www.costar.com/>

infrastructure exists, at least as a platform for further development, and that an entity can function to collect data and support it. CoStar is funded by selling access rights to the information it collects. This information is attractive to a wide audience but mostly used by commercial brokerage firms.

Bond Agencies: Rating agencies already evaluate and quantify the amount of risk associated with investment vehicles (in this case bonds) by analyzing the underlying strength of the company or government issuing the debt. The resulting ratings (from AAA to CCC, etc) provide investors with a third-party opinion of value, which, while not a guarantee of success, are generally accepted predictors. Only recently has the system fallen into question due to the recent collapse of the Collateralized Mortgage Backed Securities (CMBS) market which was, in part, blamed on improper ratings. This suggests that more transparency and/or an agreed methodology is needed to bring a similar system to the GTR, perhaps not unlike the Scorecard project described earlier.

Bringing it Together: A blend of the three entities described above provides a strong framework for a Global Title Registry. It allows the GTR to function regardless of whether or not it is directly supported by individual governments, much as CoStar functions regardless of participation by individual property owners. However, it also allows for government involvement much like WIPO and can be strengthened by treaty. The use of a rating system addresses the question of national participation by ranking titles more strongly for those countries whose governments are members and support the quality of their titles. Title insurers, while not a part of the GTR itself, would potentially be able to issue policies and determine premiums based on these rankings, which would open a wider market to this product and help offset business risk. This structure also negates reliance on a court system (to the degree

possible) since the GTR would be an independent entity. Funding would come from three sources: access to files, a nominal registration fee and USAID type funding.

The GTR would be Torrens-style in nature as this is the simplest way to ensure an unbroken chain of title. This form also addresses the lack of technological capabilities and corruption that plague many countries by removing the dependency of recordation on the functionality of these elements. Further, GTR would bring a global definition to the concept of “ownership,” which currently has many interpretations including: fee simple/freehold, possessory rights, rights to use, Long Term Lease (LTL), and building fee but no land interest. The most logical way to unite the world’s understanding is to simply spell out exactly what right is associated with each property.

Another critical device is separating taxation from the title registration and transfer process. This does not mean the public sector forgoes its claims on transfer tax; rather, it recognizes that the current way of imposing this tax is entirely ineffective and is stifling any effort to enforce a reliable system. One possible solution is to include a flat transfer tax of different amounts based on the government’s assumed value or on a third party value, which could be estimated by an MIA/RICS component of the GTR. Another possible solution is to waive transfer taxes in favor of newly recognized revenue obtained as annual property tax from now-legitimately registered properties. This option has the advantage of built-in incentive for sellers to comply with registration as they would be taxed unless the records indicate they are no longer owners of a property.

Given that there is a sensitivity to public information sharing for both political and cultural reasons, GTR would be a private data source. Adhering to the most conservative

position on this topic creates the highest likelihood of success. This would prevent the RE agent industry from losing their value to clients and would allow governments to retain information they deem unfit for public consumption.

VI. CONCLUSION PART II: COUNTRY CATEGORY RECOMMENDATIONS

This section addresses each specific country category and recommends ways to unite them with the GTR concept while recognizing the limitations in place.

CATEGORY 1: You Have Arrived: The title systems used by this category of countries is in little need of change. The main area for improvement here is taking the first step towards implementing a Global Title Registry. These countries are often global leaders in other areas including humanitarian and economic arenas. It is reasonable to assume they could and should take the lead on embracing GTR. It could easily become a vehicle for achieving the UN's pledges under the Millennium Declaration, which seeks to improve the quality of life for people living in slums.

Tying in to the Global Solution: Due to their dominance of the world's GDP, Category One countries are likely candidates to fund and promote GTR. A global HQ could also possibly be located in one of the Category One countries. These countries could then participate in GTR on a national level, thus qualifying for the highest title quality rating. The US, for example, can add language to its Bilateral Investment Trade agreements (BITs) to require countries to participate in the GTR as part of a condition deemed necessary to fully protect US firms'

operations in those countries. Similarly, each of the nations in this category can exert positive pressure on countries within their sphere of influence such as other EU member nations, NAFTA countries, or similar Asia conferences. While it may seem improbable that enough momentum can be generated for the GTR concept, it is important not to underestimate the motivation nations have to participate in institutions that benefit them. For example, to join the EU, countries have been willing to make major concessions such as changing currency and laws. Perhaps the most all-encompassing vehicle for promoting this change would be to exert influence through the WTO since it has such a wide reaching audience and is solidly, if indirectly, tied to property rights. WTO trade agreements outline policy requirements for member nations. If clauses could be added to WTAs that outline policies on land rights and title, it would have wide reaching impact and help realize some of the recommendation made by RICS.

CATEGORY 2: I'm Not Telling: A distinction needs to be drawn as a result of the wide variety of countries that fall into this category – those that are western and those that are not. The solution for the western countries, such as Italy, should simply be a matter of exerting political pressure. For non-western countries in this category, there are two approaches both of which are aimed at overcoming the government's lack of information sharing: the creation of a formal host Joint Venture program (or some similar structure of Public-Private-Partnership) and a self registration program. The JV format between a foreign entity and a local entity is often employed in Egypt to address the weaknesses in the property system. A way to build upon this model and tie it into the GTR is for a local JV entity to obtain certification from government as a sort of recognized provider. This attempts to reduce the government's role such that they only have to support one local entity who then contracts out with foreign investors. The certified JV

partner described above would then be a member of the GTR. This benefits both the JV entity and its clients by bringing certainty for the clients and business for the JV entity. The JV will also be in position to incentivize local contacts to voluntarily participate in registering their titles with GTR. Incentive for owners to do so would be to legitimize their title through GTR and thereby add value to the property. Additionally, they would reach a larger and potentially better funded market through the JV.

A self-registration program has application beyond the commercial world of JV partnerships because of its enormous residential potential. This is the perfect opportunity for ICREA's efforts to provide a practical application for local agents at the professional level. If residential agents are informed about the GTR and understand how it benefits them by bringing value and ease of deals to their markets, they may be supportive. The local agents would become members, much like an MLS system except with titles. Note that a self registration would likely also work well for the western subset of this category (like Italy) as citizens are likely sophisticated enough to understand the system and recognize its benefits.

Tying in to the Global Solution: Both local JV partners and residential agents could become members of the GTR for a fee. Agents could provide clients with paperwork at closing to check a box to opt in to the GTR. Ultimately, whether commercial/international or local/residential, the GTR adds value to property by "certifying" it in the system. This should bring greater value in subsequent sales as security of title should be worth a premium.

CATEGORY 3: Not Ready for Prime Time: It is widely understood that western countries are becoming (or have already become) service economies. We accept that most manufacturing and back-office work is outsourced as a matter of course to other countries to capture the economic

benefits associated with cheaper labor and operational costs, including land. Even within the US, outsourcing occurs when firms move to North Carolina or Alabama to capture similar benefits of cheaper facilities. Theoretically, outsourcing models are in place because they make financial sense and are workable logistically. There is every reason to assume that the same model can work in reverse if it makes sense, as is the case with Category 2 countries and the question of title registration. Inverted Outsourcing envisions capturing the technological and functional administrative advantages of more developed countries to meet the needs of less developed countries. This is a perfect place to coordinate with efforts of USAID and other political outreach organizations to help advertise the benefits of such a system to the national governments, including participation/recognition in the international community.

Tying in to the global solution: The GTR HQ can facilitate outsourcing by providing technological support via wireless connections to agents in the field and scanning title documents. A help desk can easily be staffed to offer support that countries don't have appropriate expertise in the event of technical difficulty. This system will reduce the risk of data lost due to theft or destruction because much of the data storage would be off-site.

CATEGORY 4: Political Difference of Opinion: Interestingly (although perhaps not surprisingly) there is a strong correlation between some of the countries with the greatest political challenges and the Sovereign Wealth Funds. Because these entities are governmental in nature, they are in a unique place to exert influence in these countries. Also, perhaps coincidentally, these are countries in which Shari'a Law is often prevalent due to religious affiliation. The solution to combat the multitude of owners in these countries can also be applied

to other multi-owner situations, such as in the case of communal occupation. The government simply needs to recognize a group title for land encumbered in this way rather than force the concept that individual property must be controlled by individual title. This approach might endeavor to list all the inheritors, or perhaps just the initial individuals up to a certain number. Individual interests would be subordinate to the interest of the group. While this compromises the idea of pure ownership, it is a realistic solution that overcomes a major challenge that cannot be accommodated by a strict title approach. This recognizes one of the challenges to de Soto's theories proposed by IDS (that it is inaccurate to assume that the natural evolution of property ownership is privately by the individual) and attempts to accommodate it. This solves a common and fundamental problem which renders property wholly useless and un-transferable when too many individual rights exist (or may exist) to unite to facilitate a sale. It also eliminates the risk that previously unidentified and legitimate ownership claims will be raised after a sale by making those rights subordinate to the group's intention to sell.

Tying in to the global solution: Group titles would be registered with the GTR in the same fashion as any other title. A group title would perhaps receive a lower overall rating (example: B) due to the "unique" situation.

CATEGORY 5: Not Playing Fair: This category highlights the need to first examine the applicability of a title registration. It is unlikely that these governments will be convinced to relinquish their control of the nations' land so there is no need to track title itself. However, this does not mean there is no solution; rather, a system needs to be conceived that meets the circumstances, such as the system to track and record land use rights as is used in China.

Implementing this in countries where it does not yet exist should, in theory, be fairly simple because it is unlikely that any law forbids an external system being put in place. In practice, it would be unimaginably difficult without the government's cooperation.

Tying in to the global solution: The GTR would register possession or land use rights in the same manner as freehold rights and would simply note the difference. Interestingly, possessory rights could conceivably receive the highest GTR rating because the rating is intended to evaluate the strength of legitimacy of the rights, not the level (fee vs use).

CATEGORY 6: More Info Please: These countries represent the exact scenario in which the motivation of the commercial giants can be harnessed for the mutual benefit of all parties. The cost to do business in Category six countries is so much less than alternatives that an investment to open up the markets by improving title is well justified for multinationals. Although it is not a member of this category, the example used previously of Namibia highlights the type of potential waiting to be unlocked.

Tying in to the global solution: Perhaps the best way to overcome the absolute lack of information and government functionality in these countries is to implement a Geo-referenced title system similar to that being used in Tanzania. Funding from a multinational firm taskforce and/or humanitarian sources would expedite the process and remove the reliance on national/local governments. In Tanzania, the availability of global satellite imagery is being harnessed to document extra-legal developments and delineate property boundaries that are otherwise un-recordable. The newly identified properties are then assigned title numbers. The

largest challenge associated with this approach is identifying the current occupant of the property in question so that the freehold can be granted.

VI. CONCLUSION PART III: IDENTIFYING THE PATH FORWARD

Global Title Registry is both conceptually and actually possible. To be successful, the solution must be sustainable and built on a solid foundation of information. The application of such as system must be derived from an all encompassing view that accounts for current realities while giving due consideration to all stakeholders as well as realistic mechanisms for enactment. The chart below summarizes the initial ways in which this paper suggests progress can be made:

- Political
 - National Efforts from Cat 1 and Cat 2 countries
 - Join GTR
 - Use BITs or equivalent treaties to require participation in GTR
 - EU and other world conferences
 - Require member participation in GTR
 - WTO agreements
 - Require participation in GTR
- Quasi Political
 - Sovereign Wealth Funds
 - Promote GTR agenda in politically difficult countries
 - Support “group title” concept (ex: Shari’a inheritance)
- Private
 - Multinational task force
 - Fund and support Geo-spatial title generation
 - Support local JV/PPP structures
 - NAR outreach
 - Gain professional industry level support for self-registration
- Humanitarian
 - USAID
 - Promote RICS National Land Policy suggestions
 - World Bank/IMF funding and projects
 - Require GTR participation

Many resources have been dedicated to making progress on the question of improving title registration systems, but there is an obvious need to continue research in this field. The benefits, both national and international, demand that additional progress be made – but in new areas to help fill the gaps in the global real estate and humanitarian understanding of the issue. A clearly defined path is the roadmap to successfully investigating new dimensions of the challenge and developing viable solutions. To complete the study of global title registry, the global property matrix needs further refinement. Detailed research needs to be done to both verify existing data and also to overlay other relevant or potentially revealing categories. In addition to being a repository for the basic facts, further research will help reveal additional areas in which clarity is needed to bring a deeper understanding of the issue. This paper explored some important yet perhaps obvious ways in which categorization can be achieved but careful analysis may reveal more subtle and appropriate categories. With additional research in place and final categories identified, intelligent and well-informed solutions can be explored to overcome the challenges in each category.